

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-2104

No. T74-8274

In the
United States Court of Appeals
For the Second Circuit

LEVIN, ET AL.,

Petitioners-Appellees,

vs.

MISSISSIPPI RIVER CORPORATION, ET AL.,
JACOB R. COHEN and JUNE COHEN,

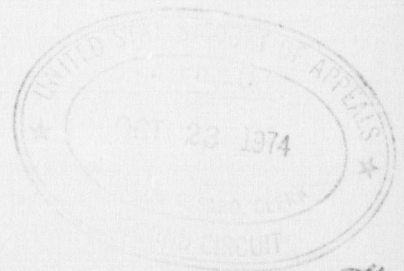
Objectors-Appellants,

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK.
HONORABLE EDWARD WEINFELD, DISTRICT JUDGE

APPENDIX

MICHAEL PAUL COHEN
7319 North Oakley
Chicago, Illinois 60645

WILLIAM HEIMOWITZ
535 Fifth Avenue
New York, New York 10017
Attorneys for Objectors-Appellants



PAGINATION AS IN ORIGINAL COPY

Affidavit of John E. Tobin

II. DLN&I Attorney's Time Billed to Alleghany For Professional Services Rendered

During the period of time from March 1968 through January 21, 1974, the date of Closing pursuant to the Settlement Agreement, attorneys of my firm have expended a total of approximately 14,312-1/2 hours in the prosecution of this action. The total fee paid or payable by Alleghany in consideration of those services is \$620,234.68.

These figures are derived from records maintained by my firm in the normal course of its business, including the diaries of the attorneys who have been engaged in work on this action.

The rates at which DLN&I has billed Alleghany for attorneys' time have varied from time to time. It is my belief that these rates have been, and that the present rates are, reasonable and commensurate with rates customarily charged by our firm and by other firms of similar repute which offer substantially similar skills and services.

III. Expenses Incurred by DLN&I

My firm has incurred reasonable and necessary expenses in connection with this litigation, and the settlement thereof, which total \$59,712.20 for the period March, 1968 through January 21, 1974. The disbursements are allocable to sundry necessities which include stenographic charges, travel, meals, telephone and telegraph services, postage, transportation, messenger and reproduction services, various types of overtime expenses, and assorted fees and certifications.

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Affidavit of John E. Tobin

I have derived the figures for expenses incurred from records maintained by DLN&I in the ordinary course of business. These records are based upon bills sent to, and payments received from, Alleghany.

The grand total billed to Alleghany for attorneys' fees and expenses amounts to \$739,946.88. As of this date, \$676,338.90 has been paid, and Alleghany has agreed to pay the remainder.

IV. Other Services Paid for Directly by Alleghany

To assist DLN&I in the prosecution and settlement of this action, Alleghany has retained the services of the law firms of Fordyce, Mayne, Hartman, Reynard & Stribling and Holland & Hart, of Eric J. Klinger, a certified public accountant, and of Transportation Research and Temple, Barker & Sloan, Inc., both management and economic consultants. The invoices for these services were customarily approved by DLN&I as reasonable and accurate. These have been paid in full by Alleghany. See Affidavit of Jared C. Horton, ("Horton Aff.").

Fordyce, Mayne, Hartman, Reynard and Stribling, a law firm of eminent standing in the St. Louis area, has, throughout this litigation, researched and advised my firm on questions of Missouri law relating to the dividends action, and has provided a number of other services in connection with discovery and litigation activities taking place in St. Louis. Alleghany has paid a total amount for these services of \$3,385.83.

Holland & Hart, a Denver law firm, provided us, during the initial stages of the litigation, with factual information with respect to prior litigation, and reviewed the complaints

Affidavit of John E. Tobin

filed in connection with the dividend actions. John L. J. Hart, Esq. served as counsel for Alleghany during the MoPac Reorganization proceedings and was an important source of background information in connection with the instant matter. Amounts paid to Holland & Hart by Alleghany for services rendered in connection with the instant action total \$565.

Transportation Research, a financial consulting firm, prepared, under the direction of Philip Maggio, the first analyses of the financial and operating conditions of MoPac. Transportation Research's studies and comments assisted my firm in the preparation of Alleghany's original Complaint, the initial development of plaintiffs' factual theories, and the drafting of the first set of interrogatories which were propounded to the defendants. Mr. Maggio is a well-known security analyst who specializes in the transportation field. Prior to his work with Transportation Research, Mr. Maggio was associated with Argus Research in New York. For services rendered in connection with this case, Alleghany has paid Transportation Research a total amount of \$21,500.

Beginning in the summer of 1972, Temple, Barker & Sloan, Inc. ("TB&S") conducted extensive analyses of MoPac's financial and operating conditions and policies, and aided DLN&I in a thorough evaluation of plaintiffs' existing factual theories and in the development of new ones. The objectives of these services were two-fold: in the short-run, to aid in answering defendants' searching interrogatories which inquired extensively into both the legal and factual bases for plaintiff's theory of the case, and in the long-run, to lay the groundwork for the presentation of

expert testimony at trial. TB&S had virtually completed this work at the time the Settlement Agreement was executed. The performance of these services required TB&S to familiarize itself completely with the financial reports of the railroad, its internal accounting, large portions of the documents discovered and plaintiffs' legal theories. Dr. Paul Whiten Cherington, who directed these activities, is an eminent authority on transportation economics, was the principal trustee of the Boston & Maine Railroad and is presently President of that Railroad. Amounts paid to TB&S by Alleghany for its services relating to this matter total \$58,997.56.

Eric J. Klinger, a certified public accountant, also aided DEN&I's analysis of the financial and operating conditions of the MoPac. In particular, his services, which commenced in 1969, included an analysis of the financial substance of defendants' answers to plaintiffs' initial set of interrogatories, personal participation in the discovery of the MoPac's files at St. Louis, an analysis of the fruits of that discovery, and an evaluation of certain of plaintiffs' factual theories. Mr. Klinger is a Doctor of Law and Economics from the University of Vienna, and has been a Certified Public Accountant for the past 32 years. His services have been retained by plaintiffs in numerous stockholder and derivative suits, among which are Heddendorf v. Goldfine, D. Mass. Civ. A. No. 56-356, in which he assisted Abraham Pomerantz, Esq., and Escott v. Bar Chris, S.D.N.Y. No. 62 Civ. 3539. Amounts paid by Alleghany for Mr. Klinger's services in connection with the instant matter total \$20,604.73.

Alleghany has paid for all of the services, referred to in IV, a total amount of \$110,053.12.

Application of Counsel for Plaintiffs Levin and
LeVasseur For the Allowance of Counsel Fees and Expenses

SUMMARY OF EXHIBITS B, C AND D

RECONSTRUCTION OF HOURS SPENT BY
ABRAHAM L. POMERANTZ AND WILLIAM E. HADEK

	<u>Hours</u>
Exhibit B: <u>Levin v. Mississippi River Corp.</u>	1731-1/2
Exhibit C: <u>Slavton v. Missouri Pac. R. Co.</u>	1227
Exhibit D: <u>Le Vasseur v. Bass</u>	<u>430-1/4</u>
	3388-3/4

Application of Counsel for Plaintiffs Levin and
Leveseur For the Allowance of Counsel Fees and Expenses

SUMMARY OF EXHIBITS F, G, AND H

HOURS SPENT BY JOHN LOWENTHAL;
SZOLD, BRANDYEN, MEYERS & ALTMAN;
AND SHERIN AND LODGEN

	<u>Hours</u>
Exhibit F: <u>Levin V. Mississippi River Fuel Corp.</u> <u>voting rights litigation</u>	5538-1/4
Exhibit G: <u>Levin V. Mississippi River Corp.</u> <u>dividend litigation</u>	717-3/4
Exhibit H: <u>Missouri legislation</u>	<u>210</u>
	6,466

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
BETTY LEVIN, ALLEGHANY CORPORATION :
and ROBERT LEVASSEUR, :

Plaintiffs, :

: 67 Civ. 5095 (EW)

-against- :

: JUDGMENT

MISSISSIPPI RIVER CORPORATION, :
MISSOURI PACIFIC RAILROAD COMPANY, :
ROBERT H. KRATT, T. C. DAVIS and :
THOMAS F. MILBANK, :

Defendants. :

-----X
Plaintiff Alleghany Corporation and the attorneys for
plaintiffs Betty Levin and Robert LeVasseur, to wit, Messrs.
Orans, Elsen & Polstein and Messrs. Pomerantz Levy Haudek &
Block, have applied for the allowance of the fees and expenses
in this action.

A hearing on the application was held on March 26,
1974, and the Court has rendered its decision dated and filed
June 26, 1974. It is

ORDERED, ADJUDGED AND DECREED that the defendants
Mississippi River Corporation and Missouri Pacific Railroad
Company pay the sum of \$350,000 for legal fees and disbursements
to plaintiff Alleghany Corporation, to be paid in equal parts
by such corporations; and it is further

ORDERED, ADJUDGED AND DECREED that the defendants
Mississippi River Corporation and Missouri Pacific Railroad
Company pay the sum of \$1,750,000 as legal fees and the further

sum of \$22,422.06 as disbursements, for a total of \$1,772,422.06,
jointly to Messrs. Orans, Elsen & Polstein and Pomerantz Levy
Haudek & Block, to be paid in equal parts by such corporations.

Dated: New York, New York
June , 1974.

Memorandum of Corporate Defendants in
Answer to Fee Applications, Page 3.

and disbursements if the application does not exceed \$2,000,000 for fees and \$30,000 for actual disbursements for services performed and expenses incurred in this action. The corporate defendants do not oppose such an allowance.

These defendants are not to be taken as concurring in any of the statements concerning fact or law, including the suggestion that time expended in a prior litigation may serve as the basis for an award of fees in this case, contained in any of the papers submitted by plaintiff Alleghany in support of its application or by counsel for plaintiffs Levin and LeVasseur in support of their application.

Dated: March 19, 1974

Everett I. Willis,
Robert S. Wolf,
Gerald E. Ross,

Of Counsel.

David W. Peck,
Michael M. Maney,
Carroll E. Neesemann,
Marcia B. Paul,

Of Counsel.

Respectfully submitted,

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